

BEFORE THE
POSTAL RATE COMMISSION

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COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

ANSWER OF UNITED PARCEL SERVICE IN
RESPONSE TO MOTION OF THE UNITED STATES
POSTAL SERVICE FOR RECONSIDERATION,
OR FOR ALTERNATIVE RELIEF
(March 9, 1999)

UPS hereby responds to the Motion of the United States Postal Service for Reconsideration, or for Alternative Relief ("Postal Service Motion"), in light of Commission Order No. 1230.

The Postal Service has asserted that it "has identified a software development and license Agreement . . . , as well as exhibits and addenda to that instrument," in response to Commission Request No. 4(a). Postal Service Motion at 3. It claims that this Agreement and its exhibits and addenda "include highly sensitive commercial information." *Id.* This sensitive information apparently consists of "financial information" and "software license provisions." *Id.* at 3-4.¹

UPS believes that the information now before the Commission -- contained in the exhibits to UPS's Complaint, the Postal Service's Answer to the Complaint (which,

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1. The Postal Service asks that, if the Agreement is to be produced, it be permitted to redact the financial information. *Id.* Although the Postal Service does not say so, we assume it also wishes to redact the software license provisions.

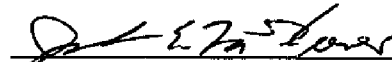
among other things, admits the authority and accuracy of the exhibits), and its Partial Response to Commission Order No. 1229 -- is sufficient to show that Post E.C.S. involves the provision of a domestic postal service and is therefore subject to the Commission's jurisdiction.² Thus, at least at this stage of the proceeding, UPS believes that it is not necessary for the Agreement to be produced in order to deny the Postal Service's Motion to Dismiss UPS's Complaint. Should the Commission not agree that the information available to it sufficiently demonstrates the postal nature of domestic Post E.C.S. transactions, UPS renews the request, made in its Answer in Opposition to the Motion to Dismiss, for an opportunity to conduct discovery on that issue.³ If discovery is necessary, UPS will press the request for the documents specified in Commission Request 4(a), with the financial and technical software license provisions redacted.⁴

WHEREFORE, United Parcel Service respectfully requests (1) that the Commission deny the Postal Service's Motion to Dismiss the Complaint and grant the

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2. For example, in its Partial Response to Commission Request 2(b), the Postal Service acknowledges that "transactions are originated and directed to recipients within the U.S." and implies that only one large customer directs messages "to recipients worldwide."
 3. The Commission's requests cover some, but not all, of the information UPS would seek in discovery. Moreover, the Postal Service's unverified Partial Response to Commission Order No. 1229 is equivocal and raises as many questions as it answers.
 4. Once such information is redacted, there is no need for a protective order as to the remaining portions of the Agreement. The financial information may become relevant later in the proceeding, and therefore may need to be produced at that time, should the Commission be called upon to recommend a rate or rates for Post E.C.S.

Postal Service's Motion for Reconsideration as to Commission Request No. 4(a) without prejudice to a later request for the information there specified, or (2) in the alternative, grant UPS discovery relevant to the issues raised by the Postal Service's Motion to Dismiss.

Respectfully submitted,



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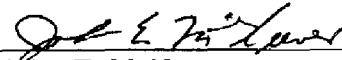
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Of Counsel

Dated: March 9, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.



John E. McKeever

Dated: March 9, 1999
Philadelphia, PA